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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/677,713	10/02/2003	Daniel M. Martelli	1200212R	9171
35227	7590	03/21/2006	EXAMINER	
POLYONE CORPORATION			CHEVALIER, ALICIA ANN	
33587 WALKER ROAD			ART UNIT	PAPER NUMBER
AVON LAKE, OH 44012			1772	

DATE MAILED: 03/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/677,713	MARTELLI, DANIEL M.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Alicia Chevalier	1772	

*-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 07 March 2006 and 14 February 2006.  
 2a) This action is **FINAL**.                            2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1-4,6-10,13 and 14 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1-4,6-10,13 and 14 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

## **RESPONSE TO AMENDMENT**

### ***Request for Continued Examination***

1. The Request for Continued Examination (RCE) under 37 CFR 1.53 (d) filed on March 7, 2006 is acceptable and a RCE has been established. An action on the RCE follows.
2. Claims 1-4, 6-10, 13 and 14 are pending in the application, claims 5, 11 and 12 have been cancelled.
3. Amendments to the claims, filed on February 14, 2006, have been entered in the above-identified application.

### ***REJECTIONS***

4. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

### ***Claim Rejections - 35 USC § 103***

5. Claims 1-4, 6-10, 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ota et al. (U.S. Patent No. 4,481,163) in view of Chubb et al. (U.S. Patent No. 6,214,424).

Ota discloses a molded thermoplastic product (*col. 3, lines 24-36*) comprising an outer surface with an etched pattern (*sandblasted, rugged ground surface, col. 3, lines 59-61*) and frosted matte finish (*col. 2, lines 5-10*). Ota discloses that the outer surface is located in one area of the product to provide a different matte finish appearance from the remainder of the product (*col. 2, lines 46-51*). Ota discloses that the product is molded from a thermoplastic resin that is

transparent, semi-transparent, or translucent (*col. 4, lines 5-22*). Ota discloses that the thermoplastic resin is polyethylene terephthalate (*col. 3 line 39*). As seen in Ota's figure 2 the ratio of depressions to lands in the surface area can range from about 50 to about 80 percent. Ota discloses that the product is useful as a container (*col. 1, line 12*). Ota discloses that the colorant provides diffused translucency to the product and has texture (*col. 2, lines 5-21*).

Ota fails to disclose that the frost colorant is present from about 0.2 to about 5 parts by weight of the thermoplastic resin and the depth of the depressions in the etch pattern.

Chubb discloses a frosted polymer composition with 1 part by weight colorant (*example 1*). Chubb also discloses that it is desirable for bottles to be opaque or translucent (*col. 3, lines 61-67*).

Therefore it would have been obvious to one of ordinary skill in the art to add 1 part by weight colorant to Ota's composition as taught by Chubb in order to create an opaque bottle.

The exact depth of the depressions is deemed to be a result effective variable with regard to the frosted look. It would require routine experimentation to determine the optimum value of a result effective variable, such as parts by depth of depressions, in the absence of a showing of criticality in the claimed parts by weight. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990).

#### ***ANSWERS TO APPLICANT'S ARGUMENTS***

6. Applicant's arguments in the response filed October 18, 2005 regarding the previous rejections of record have been considered but are moot due to the new grounds of rejection.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac  
3/16/06



ALICIA CHEVALIER  
PRIMARY EXAMINER